THE EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Ms B Alan	**v**	(1) London Borough of Hammersmith & Fulham (2) The Governing Body of Cambridge School

Heard at: London Central **On**: 31 March 2017

Before: Employment Judge Baty

Representation:

Claimant: Mr T Gillie (Counsel)
Respondents: Mr B Gil (Counsel)

RESERVED JUDGMENT

The Claimant's complaint of breach of contract/unlawful deduction from wages fails.

REASONS

The Complaint

1. By a claim form presented to the Tribunal on 10 October 2016, the Claimant brought a complaint of breach of contract/unlawful deduction from wages in relation to alleged unpaid notice pay and a further complaint of unlawful deduction from wages in relation to alleged unpaid wages for the period from 9 – 30 April 2016. The Respondents defended the complaints.

2. At the start of this hearing, Mr Gil confirmed that he was acting on behalf of both Respondents.

3. The representatives also agreed that the correct name of the Second Respondent was "The Governing Body of Cambridge School" and not "Cambridge School" as set out in a claim form.

4. At the start of the hearing, Mr Gillie confirmed that, as regards the Claimant's complaint of unlawful deduction from wages in relation to the alleged unpaid wages for the period from 9 – 30 April 2016, a payment had been made to the Claimant in relation to this and that there was therefore no longer any complaint in this respect. I therefore dismissed that complaint.

5. Furthermore, the representatives agreed that, should the breach of contract/unlawful deduction from wages complaint in relation to notice pay succeed, the amount payable by way of notice pay would be £17,014 (gross) (in respect of four months' notice pay).

The Issue

6. In light of the above, I agreed with the representatives what the single issue for this hearing was, namely:-

> "Was the Claimant entitled to be paid in respect of the period from 1 May to 31 August 2016?"

The Evidence

7. Witness evidence was heard from the following:-

For the Claimant:

The Claimant herself.

For the Respondent:

Mr Alan Campbell, the Head Teacher of Cambridge School since April 2015;

Ms Rebecca Moore, the School Business Manager at Cambridge School since November 2014; and

Mr David Rogers, the Senior HR Manager for Schools falling under the Boroughs of the First Respondent and of Kensington & Chelsea and Westminster.

8. I asked the parties why it was that Mr Dennis Charman, the National Union of Teachers (Hammersmith & Fulham Teachers) Representative Assistant Secretary, had not been called as a witness, given that he was clearly, on any level, to some extent a go between, between the Claimant and the Respondents in relation to discussions regarding her potentially taking voluntary redundancy (although the extent of his authority and remit was disputed). However, clearly, a key person to give evidence in relation to the extent of that authority would be Mr Charman himself.

9. Mr Gil stated that the Respondent had simply expected that the Claimant would be calling Mr Charman; however, when witness statements were exchanged, no witness statement was provided in relation to him. Mr Gillie gave no explanation as to why Mr Charman had not been called.

10. An agreed bundle numbered pages 1-154 was produced at the hearing.

11. In addition, the Respondents produced a chronology, which was not agreed by the Claimant.

12. I read in advance the witness statements and any documents in the bundle to which they referred.

13. A timetable for cross examination and submissions was agreed between the representatives and myself at the start of the hearing and was broadly adhered to.

14. Mr Gillie produced written submissions and both parties made oral submissions.

15. Whilst it was possible to complete the evidence and submissions within the one day allocated, there was not enough time for me to consider my decision and give judgment on the day and therefore judgment was reserved.

16. During her cross examination by Mr Gil, the Claimant repeatedly failed to answer questions put to her, even very simple ones, and had to be reminded on many occasions by me to answer the questions put. Very often, she seemed to determine to set out what she wanted to say rather than to answer the questions which were actually being put.

17. The Claimant had in her statement made a reference to the "Burgundy Book", an agreement negotiated with the Trade Unions which she maintained contained provisions which affected her rights to notice. However, no copy of the Burgundy Book was set out in the bundle. At one point during his cross examination of Mr Campbell, Mr Gillie started making reference to the Burgundy Book and Mr Gil objected as there was no copy of it in the bundle. I noted that the reference in the Claimant's witness statement to the Burgundy Book simply seemed to suggest that the Burgundy Book provided for notice to be given in line with Section 86 of the Employment Rights Act 1996 ("ERA") (i.e. it merely suggested that the Burgundy Book confirmed that statutory notice would apply to the Claimant, which would be the case anyway). Mr Gillie, however, referred to other provisions in the Burgundy Book. Whilst he was not specific about these, and following some discussion during which Mr Gil maintained that, if Mr Gilllie was going to rely on them, copies would have to be provided such that Mr Gil could see them and there would have to be an amendment to the claim, Mr Gillie confirmed that he would not be relying on anything else in the Burgundy Book other than the provision relating to statutory notice referred

to above. He did not, therefore, seek to add an extract from the Burgundy Book to the evidence.

The Law

18. The burden of proof is on the Claimant to prove, for the purposes of her breach of contract claim, that she had an entitlement to notice in the manner which she describes.

19. In terms of the complaint as brought under Section 13 of the ERA (deductions from wages), the Claimant must establish that the wages sought were "properly payable".

20. Section 86(1) of the ERA provides that the minimum period of notice to be given by an employer to an employee with at least 12 years' continuous employment is 12 weeks. It was not disputed, for the purposes of this claim, that the Claimant had in excess of 12 years' continuous employment and therefore a minimum notice period of 12 weeks was applicable to her.

21. Section 86(3) provides that any provision for shorter notice in any contract of employment with a person has effect subject to the statutory minimum notice provisions of section 86(1); but that that section does not prevent either party from waiving his right to notice on any occasion or from accepting a payment in lieu of notice.

22. Separately from the statutory provisions, an individual may waive any rights to notice under a contract at common law too.

23. Both representatives referred me to various other authorities in the course of their submissions and I refer to these, where they are relevant, in my conclusions below.

Findings of Fact

24. I make the following findings of fact. In doing so, I do not repeat all of the evidence, even where it is disputed, but confine my findings to those necessary to determine the agreed issues.

25. Cambridge School (the "School") is a special school which teaches children between the ages of 11 and 16 who have learning disabilities, social, emotional, and mental health problems and autism. All its referrals come from various local authorities, including the Bi-Borough area of Hammersmith & Fulham (the First Respondent) and Kensington & Chelsea. There are 71 children on the School's roll. Mr Campbell has been Head Teacher at the School since April 2015.

26. The Claimant had been employed by the School from 1 January 2006 as a teacher of music. However, she in fact had continuous employment with the First Respondent, her employer, from 1 September 1993.

27. The Claimant's employment contract (which was with the First Respondent), dated January 2006, states:-

> "11. NOTICE OF TERMINATION OF EMPLOYMENT
>
> Your appointment will normally be subject to termination on either side by notice of two months expiring on 31 December or 30 April, and by 3 months expiring 31 August."

28. However, given the Claimant's length of service, she was entitled to statutory minimum notice of 12 weeks and this minimum notice was indeed confirmed by the provisions of the Burgundy Book.

29. (The provisions in the Claimant's contract explain the date of "28 February 2016", by which the Claimant maintains in relation to this claim that notice of termination of her employment should have been given for her employment to end on 30 April 2016 (i.e. 2 months' notice under the terms of her contract), albeit that, to give 12 weeks' notice (as required under statute and the Burgundy Book) to terminate by 30 April 2016, such notice would need to have been given by 5 February 2016.)

30. In November 2015, the School commenced a consultation about the restructure of the School. It applied the London Borough of Hammersmith & Fulham policy called "Managing Organisational Change including Redeployment". There was the prospect of redundancies from the start and the School engaged with the National Union of Teachers (NUT) (Hammersmith & Fulham Teachers)' representative (Assistant Secretary Dennis Charman) and with other unions. Mr Charman supported all NUT members and attended the formal consultation meetings. Mr Charman had been on the School payroll as a union representative for over 20 years and knew the staff, the School and these sorts of exercises very well. Although he was on the School's payroll, he was not based at the School.

31. The School began commencing consultation with its employees and their Trade Union representatives regarding redundancies at the School and seeking volunteers for redundancy in accordance with their redundancy policy from around November 2015.

32. The Claimant was off sick around the period of time of the consultation and was unable to attend the consultation meeting in November 2015. However, the School sent all of the consultation documents to her at her home. At the time, the First Respondent's Pensions Team produced a redundancy estimate for all members of staff. HR sent the School the redundancy estimate in relation to the Claimant and the School sent it on to her. That

estimate is dated 17 November 2015. It set out, in error, that her continuous service was from 1 January 2006 (the date she started working at the School). It also set out the redundancy calculations based (correctly) on a proposed leaving date of 30 April 2016. This was the date by which it was intended that any voluntary redundancies would take effect, being a date after the end of the Easter term 2016, but before the start of the Summer Term 2016. The consultation with the Unions in relation to voluntary redundancies was done on the basis that any voluntary redundancies would take effect at that time. The calculation in relation to the Claimant was, however, incorrect in relation to her redundancy payments, as the calculation was based on the incorrect date of start of continuous employment.

33. As this redundancy estimate was sent to the Claimant, she was aware in November 2015 that, if anyone was opting for voluntary redundancy, the leaving date would be 30 April 2016. The Union would also have been aware of that.

34. Staff were asked to express whether they wished to apply for voluntary redundancy.

35. On 6 January 2016, Mr Charman went into the School to answer any questions on the restructure with staff who were members of the NUT. On 11 January 2016, Ms Rebecca Moore, the School Business Manager, emailed staff to state that central HR would be attending the School on 13 January 2016 to discuss the restructure with any staff who would like to meet them. The Claimant replied saying she would like to meet HR the next day and duly attended the redundancy meeting on 13 January 2016. Whilst the Claimant had been off sick at the end of 2015, she was in School in early January 2016, except for days when she had medical appointments, until her cancer treatment began on 26 January 2016. Thereafter she did not go into the School and had been advised not to go in by her medical specialist.

36. On 18 January 2016, the Claimant sent in to the School an expression of interest form expressing her interest in a role in the new structure. The Claimant had previously expressed an interest in voluntary redundancy.

37. Her expression of interest form was somewhat ambiguous because, in the first part of it, she confirmed that she expressed an interest in the role of "Class Teacher" but also did not cross out the second part of it which stated that she would prefer to take voluntary redundancy.

38. However, in the light of this form, Mr Campbell acknowledged that he would need to take the Claimant into account in the round of interviews that were to take place in April 2016 in relation to roles in the new structure. As noted, the Claimant was still in and out of the school on January 18 2016 but she went off sick permanently from 26 January 2016.

39. Mr Charman was the Claimant's Trade Union Representative.

40. The Claimant's evidence is that, from around 26 January 2016, when she went off on sick leave, she authorised Mr Charman to request a breakdown of her redundancy figure from the Respondents and to advise her on the proposed redundancy process but that she did not advise the Respondents to cease all contact with her and that she did advise the Respondents that there would be times when she would not be well enough to respond immediately and that therefore she authorised Mr Charman to liaise with the School in order to obtain a redundancy figure and breakdown on her behalf. However, there is no evidence that she set out specifically in this level of detail to the School what Mr Charman's role was. In fact, Mr Campbell is not aware of the Claimant having spoken to the School herself at all. Rather, his evidence (backed up by Ms Moore's evidence, which was that Mr Campbell had told her this at the time) was that around that time Mr Charman advised the School that the Claimant had advised him that the School was not to contact her as her treatment should take precedence and that he had her full authority to act for her in the discussions that were going to take place regarding her voluntary redundancy; that this did not seem strange as the School was used to dealing with Mr Charman on a whole range of situations; and that, as far as they were concerned, they understood the Claimant's desire to be left alone and were in no doubt in their discussions with Mr Charman that he was passing on the School's messages to the Claimant and passing hers to the school.

41. I found all of the Respondents' witnesses credible and had no reason to doubt their evidence; they were straightforward in answering the questions that were put to them and consistent in their answers. By contrast, as noted, the Claimant frequently did not answer questions put to her, even simple ones, and seemed keen to get a particular narrative of her own into her answers even where the questions did not relate to it. Therefore, on the balance of probabilities, I prefer the evidence of the Respondents' witnesses to the Claimant's where it conflicts.

42. In addition, it was the direct evidence of Mr Campbell and the clear recollection of what Ms Moore was told at the time that Mr Charman had told Mr Campbell that he had the Claimant's full authority. In addition, it would be unsurprising that Mr Charman, an experienced NUT Representative, would have the Claimant's full authority at a time when she was off sick and concentrating on her cancer treatment.

43. For all these reasons, I find, on the balance of probabilities, that Mr Charman had the Claimant's full authority in relation to the redundancy process and any negotiations and agreements on her behalf (and that it was not limited merely to requesting a breakdown of the redundancy figure and advising her on the redundancy process); that he had communicated to the School that he had the Claimant's full authority to act for the Claimant; and that the Claimant did not herself communicate anything to the School about the level of Mr Charman's authority but that the only communication which the School had in relation to this came from Mr Charman himself.

44. On 29 January 2016, Mr Charman told Mr Campbell that the Claimant was requesting voluntary redundancy and that she had decided that, given her circumstances, she would like to leave the school at the end of the Easter Term. Mr Campbell had no direct discussions with the Claimant at all during this period and all of his discussions were with Mr Charman.

45. Mr Charman would sometimes pop into Mr Campbell's office when he was in the School and sometimes they discussed matters by telephone or email. Sometimes he would often require a little chasing but Mr Campbell was used to that. It did not seem in any way odd to Mr Campbell that Mr Charman was dealing with the Claimant's redundancy.

46. However, in the light of the expression of wishes form, on 1 February 2016 Mr Campbell wrote to Mr Charman saying that he needed to speak to him about the Claimant; that he was very anxious to know from Mr Charman whether the Claimant was still intending to take redundancy as he was interviewing teachers the following week (the week commencing 8 February 2016) and needed to be certain before then about whether he needed to include the Claimant in the list for interviews. He added that he did not want to put her under additional stress while she was sick.

47. Furthermore, on 2 February 2016, Ms Moore sent an email directly to the Claimant in which she said that Mr Campbell would email her regarding her interview separately.

48. Mr Campbell heard nothing from Mr Charman and therefore emailed him again on 4 February 2016 stating that he needed to speak with him as a matter of urgency about the Claimant and the interview process.

49. The Claimant emailed Mr Charman on 4 February 2016 stating that he had not got back to her and Mr Campbell had been trying to get hold of him as well; that the following Tuesday was the interview day for the teacher's job; that Mr Campbell had said that it would throw everything out if she was not well enough/able to interview as the "resignation date" for April is half term; that she could not go into the School because of her treatment; and that she needed some urgent advice on that.

50. In the meantime, on 5 February 2016, administrative staff at the First Respondent had informed Ms Moore that the Claimant's continuous service did indeed begin in 1993. This was in response to the Claimant having sent documentation to Mr Charman stating that her date of start of continuous employment was definitely 1 September 1993 and the School consequently seeking to get an updated calculation on any redundancy payment payable to her.

51. Mr Campbell emailed Mr Charman again on 5 February 2016, as he had heard nothing from him, asking him how he wished to proceed now that the Claimant's correct continuous employment was confirmed. He received no

reply so emailed him a few hours later saying that he needed to talk to him as a matter of urgency. Mr Charman then responded that he would call Mr Campbell within the hour. When they spoke, Mr Charman confirmed that the Claimant would take voluntary redundancy. They then discussed her continuous employment which she had correctly queried when she had first received her redundancy payment figure in November 2015. At no point did Mr Charman raise any issue about the proposed end date of 30 April 2016. Mr Charman stated that the Claimant's understanding, based on his advice, was that she would receive a redundancy payment based on a maximum 20 years' service based on 1.5 weeks gross pay per year of service (in other words the maximum payment payable). He also confirmed that the Claimant knew that her last day of service would be 30 April 2016 and that his calculations were based on this as the end date. He also stated that he therefore expected her redundancy payment to be in the region of £30,000 and Mr Campbell agreed that this was about right.

52. Mr Campbell's recollection of the conversation was very clear as he was particularly keen to know the outcome as it would impact upon the next week's interview programme. If the Claimant's decision had been that she wanted to remain at the School, this would have meant that he would have been unable to carry out the interviews in the order planned. He was willing to reschedule those interviews but he needed clarity to end the uncertainty. He would have pushed them back if he had had to because the Claimant was off sick at the time. He had envisaged new teachers starting after the Easter holidays on 3 May 2016 and, therefore, any staff leaving under the restructure would therefore have known that 30 April 2016 would have been their last date of employment.

53. Four other members of staff applied for and took voluntary redundancy under the same restructure. All of them had a leaving date of 30 April 2016 or before.

54. In addition, had the Claimant been intending to stay on the staff list until later than 30 April 2016, or through the summer holidays, this would have seriously affected the School's budget for the year and, without such an assurance and agreement from Mr Charman about the Claimant taking voluntary redundancy with effect from 30 April 2016, Mr Campbell would not and could not have proceeded with the interviews (which he duly did do on the basis that Mr Charman had told him that the Claimant was accepting voluntary redundancy.

55. Following their conversation, Mr Charman then forwarded an email on 5 February 2016 to Mr Campbell stating:-

"Thank you for this.

I read this as confirming that Barbara has continuous service dating back in excess of 22 years. Given her age and the consequent multiplication factor of 1.5 weeks per year of

service post 41 years of age then Barbara seems to qualify for something approaching the maximum figure of thirty weeks salary.

Barbara has advised me that she is willing to take redundancy on this basis so if we can get an initial set of figures to her as soon as possible I believe we can then forward you her formal acceptance. …"

56. As far as Mr Campbell was concerned, matters were concluded on 5 February 2016.

57. On 8 February 2016, Mr Charman sent an email to Ms Moore, although actually addressed to Mr Campbell, as follows:-

"Dear Alan

I am copying you into the email I have sent via Rebecca confirming Barbara Alan's wish to accept voluntary redundancy, subject to the final figures being presented and in line with our understanding (please see below)."

58. Underneath this was what appears to be text from an earlier email from Mr Charman to Ms Moore, which included the following:-

"I can confirm that Barbara Alan has agreed that she will accept voluntary redundancy subject to the final figures being prepared.

Barbara's understanding, based on my advice and the conversation I have had with Alan and yourself, are that Barbara will receive a redundancy payment based on the maximum twenty years reckonable service.

…

I think we are almost there now depending upon the final written statement of particulars which I am confident will bring this matter to a successful conclusion.

…"

59. There was a delay in the replacement form with the estimate of payments for redundancy for the Claimant being prepared and delivered to the School by the First Respondent's Pension Team (which is not uncommon). The final form, which contained the correct redundancy figures, is dated 2 March 2016. It too provides for a leaving date of 30 April 2016.

60. In the meantime, the Claimant chased Mr Charman by text as she had not yet received these figures.

61. On 17 March 2016, Ms Moore wrote to the Claimant (in Mr Campbell's name), using a standard letter which she used in relation to all of the voluntary redundancies, confirming that they had accepted her wish to take voluntary redundancy and attaching the redundancy estimate form dated 2

March 2017. Although it was sent by first class post, the Claimant maintains that she did not receive this letter at the time.

62. By a further letter of 1 April 2016, in Mr Campbell's name, Ms Moore informed the Claimant of when the redundancy figure would be paid to her, specifically on her normal and final salary date on 29 April 2016. Although this letter too was sent by first class post, the Claimant maintains that she did not receive it.

63. Neither of the letters was returned to the School as undelivered.

64. On 11 April 2016, the Claimant texted Mr Charman. Her text included the following:-

> "Have you managed to find out about my redundancy payment yet. I think I am supposed to be leaving next week aren't I? As he has gone over the 28th Feb, doesn't he have to pay me to August now …"

65. In a further text of the same day she stated to Mr Charman:-

> "… As Alan has missed the 28th Feb. Doesn't he have to pay me until August 31st now …"

66. In an email of 11 April 2016 to Mr Campbell, Mr Charman stated:-

> "I am writing to see if you know how Barbara Alan's redundancy is progressing.
>
> It is my understanding that Barbara was made redundant effective from the "end of term" which I am assuming to be the 30th April.
>
> However, Barbara has not heard anything further since there was an initial query (now resolved) about her service record. …"

67. Mr Charman also informed Ms Moore that the Claimant was concerned in relation to the redundancy figures and Ms Moore had become concerned that the Claimant had not received her letters. She therefore emailed the Claimant directly on 15 April 2016 attaching the two letters she had previously sent (of 17 March and 1 April 2016). The Claimant received this email and the letters it attached.

68. The Claimant emailed Ms Moore back on 18 April 2016. She stated:-

> "Thanks for the letter I received on Friday 15th April but was dated 1st April regarding my redundancy. I also didn't receive the letter you state you sent on 17th March."

In this email she did not question either the end date of 30 April 2016 or the amount of the redundancy payment.

69. On 28 April 2016, the Claimant emailed Mr Campbell stating:-

> "… Regarding my redundancy figure, I was not consulted about this or have been sent a breakdown of the figures and how it has been worked out.
>
> These letters and figure have been sent past the common leaving date 28th February, therefore my contractual leaving date should be 31st August.
>
> Dennis (NUT) will be in contact with you soon."

70. Mr Campbell was extremely surprised by this email. He replied on the same day:-

> "… The redundancy package was for leaving at the end of the Spring term as the restructure commenced on April and you indicated that you did not want to return to work as teacher in the new structure. The end date was confirmed with Dennis.
>
> I will of course discuss this with you and Dennis."

71. Mr Campbell heard no more about the matter after that and assumed that the Claimant and Mr Charman had resolved the issue.

72. The Claimant's redundancy payment was made to her, as the Respondent had previously informed her, on 29 April 2016. Her last day of employment was 30 April 2016. No objection was made by the Claimant to the School about the paying of the redundancy payment to her or, her 28th April email aside, about the fact that her employment ended on 30 April 2016. Both omissions are surprising if she genuinely thought that her contract was continuing until 31 August 2016.

73. The Claimant's last fit for work certificate (in relation to her sickness absence) was dated 16 March 2016 and certificated her as not fit for work from 1 February until 30 April 2016. The Respondent received no further certificates from the Claimant in respect of any period after 30 April 2016. As far as Mr Campbell was concerned, this was a clear indication that she understood her employment had ended on 30 April 2016.

74. Mr Campbell heard nothing further on the matter until ACAS early conciliation, which commenced on 28 July 2016, almost three months later.

Conclusions on the Issues

75. I make the following conclusions, applying the law to the facts found in relation to the agreed issues.

Notice

76. As set out in my findings of fact above, the notice provisions in the Claimant's contract provided that, in order to terminate the contract lawfully, the First Respondent was required to give her a minimum of 12 weeks' notice of termination of employment for her employment to terminate on 30 April 2016.

77. Mr Gil's primary submission is that in fact such notice was given by the Respondent and that it was given in November 2015 through the redundancy consultation and the presentation to the Claimant of the 17 November 2015 redundancy payments form, which had a clear leaving date of 30 April 2016 set out in it. He rightly submits that, when an employer gives notice, that notice does not have to be accepted by the employee for the notice to be valid and, rightly, submits that, if that were the case, it would not be possible for an employer to terminate a contract by notice without the agreement of the employee. However, whilst I accept that the 17 November 2015 form made clear that, if voluntary redundancy were accepted, the end date would be 30 April 2016, I do not accept that it started the clock running on notice. Essentially, that documentation provided information as to what the terms of any voluntary redundancy would be should they be accepted by the Claimant. If the Claimant had not accepted voluntary redundancy, then her employment would not have terminated on 30 April 2016 so the information in November 2015 cannot amount to notice that her employment would terminate on 30 April 2016.

78. Mr Gil submits that the leaving date may be agreed in future even if the details of leaving are not yet agreed; that is quite possible in principle, but did not apply here. As I have found, without agreement to voluntary redundancy by the Claimant, the First Respondent was not giving her notice that her employment would terminate on 30 April 2016.

79. The First Respondent was giving the Claimant notice that, if voluntary redundancy was accepted by her, it would take effect on 30 April 2016, but for notice of termination of employment to be said to have been given in these circumstances, the Claimant would have to have accepted voluntary redundancy. Without that acceptance, her employment would not just have automatically terminated on 30 April 2016 as a result of being provided with the November 2015 form; rather, in the absence of any party terminating the contract by another means (whether lawfully or in breach of contract), the contract would have just continued.

80. However, I do accept that, if the Claimant accepted voluntary redundancy, notice of that voluntary redundancy and when it would take effect had been given in November 2015, well in advance of the 12 week minimum requirement under the combination of the Claimant's contract and the statutory minimum notice requirements and therefore in accordance with the Claimant's contractual notice.

81. The question, therefore, is whether the Claimant accepted voluntary redundancy.

Authority

82. It is not disputed that the Claimant did not herself in person inform the Respondents that she was accepting voluntary redundancy. However, as set out in my findings of fact, acceptance of voluntary redundancy was communicated to Mr Campbell orally by Mr Charman on 5 February 2016. The issue, therefore, arises as to whether or not Mr Charman had actual or ostensible authority to do so on the Claimant's behalf.

Actual Authority

83. As set out in my findings of fact above, I have not accepted the Claimant's evidence that she only gave Mr Charman limited authority to negotiate regarding her redundancy on her behalf. I have accepted that he had full authority. Therefore, that is the end of the matter and Mr Charman did have authority to accept voluntary redundancy on her behalf, including the terms of any payment and any end date in relation to it. Even had there been no discussion about the end date between Mr Charman and Mr Campbell, the fact that Mr Charman accepted voluntary redundancy on the Claimant's behalf meant, in accordance with the above analysis, that the Claimant had in excess of 12 weeks' notice of termination of employment (from November 2015) and there was therefore no breach of contract.

84. As a matter of fact, Mr Charman did, however, also confirm the termination date of 30 April 2016 to Mr Campbell. Therefore, even if the requisite notice had not been given, Mr Charman would in so doing have been waiving the notice provision on the Claimant's behalf (see below).

Ostensible Authority

85. However, even if I were wrong on my findings of fact about the authority the Claimant gave Mr Charman, Mr Charman certainly also had ostensible authority to negotiate and conclude an agreement for voluntary redundancy on the Claimant's behalf.

86. I was referred by Mr Gil to the Court of Appeal case of First Energy (UK) Limited v Hungarian International Bank Limited [1993] BCLC and in particular one section of Steyn LJ's judgment. That was a case where an individual who was a company secretary attended negotiations and by virtue of his position acted with apparent authority. Steyn LJ noted that it would be absurd to suggest that the third party should seek information from the Board of Directors as a whole in relation to his authority.

87. In relation to the current case, the fact that Mr Charman had a long standing role as NUT representative for teachers at the School, the fact that he represented other NUT members in this round of redundancies and at other times previously, and the fact that he told Mr Campbell that he was acting on the Claimant's behalf and specifically told him not to contact the Claimant directly, was more than enough to give him ostensible authority. It would, as set out in First Energy, have been "absurd" to expect the School to contact the Claimant and ask whether or not this was the case. Therefore, whilst I make this finding for completeness given my earlier finding that Mr Charman had the Claimant's actual authority, he certainly had at least her ostensible authority.

88. Therefore, any agreement to accept voluntary redundancy (or indeed any concessions or waivers which he may have made) were binding on the Claimant.

Waiver

89. As noted, Section 86(3) of the ERA states that either party may waive his or her rights to notice. Separately from the statutory provisions, an individual may waive any rights to notice under a contract at common law too.

90. As set out in my findings of fact, in which in relation to the discussions on 5 February 2016 I have accepted Mr Campbell's evidence (having no reason to doubt it and in the absence of any evidence (surprisingly) from Mr Charman at this Tribunal), there was an agreement over the phone between Mr Charman and Mr Campbell that the Claimant would take voluntary redundancy, she would be paid the maximum redundancy based on 30 weeks' salary and the termination date would be 30 April 2016. Even if I were wrong about the giving of notice as set out in my conclusions above, that agreement in itself is enough to constitute a waiver of any notice provision which may otherwise have applied.

91. (In any event, it should be noted that 5 February 2016 was in fact 12 weeks prior to 30 April 2016 and there is no requirement in the Claimant's contract (or under section 86 ERA) for notice from the employer to be given in writing. Therefore, regardless of the fact that the agreement on 5 February 2016 amounted to a waiver of notice, the requisite notice was effectively given orally on that date anyway when the end date of 30 April 2016 was discussed and agreed over the phone between Mr Campbell and Mr Charman.)

92. Mr Gillie has focused on the content of Mr Charman's email to Mr Campbell subsequent to this conversation which states that the Claimant is "willing to take redundancy on this basis so if we can get an initial set of figures to her as soon as possible, I believe we can then forward you her formal acceptance."

93. However, first of all, that email cannot put a gloss on or detract from the agreement previously made by telephone between Mr Charman and Mr Campbell. A binding agreement had already been made orally between them.

94. Secondly, even if it could, it amounts merely to including a condition that, so long as the redundancy figures were provided, voluntary redundancy on the basis discussed (with a termination date of 30 April 2016) would be effective. Those figures were of course duly provided and represented the maximum redundancy payment possible, which was what Mr Charman and, presumably, the Claimant, were expecting.

95. The same applies in relation to Mr Charman's email of 8 February 2016. That email refers to accepting voluntary redundancy "subject to the final figures being prepared"; those figures were duly prepared and provided and, even if contrary to my findings there had not already been a binding agreement concluded orally on 5 February 2016, the only outstanding condition to the completion of the agreement was fulfilled when the figures were provided (which they were on 17 March 2016 and which figures the Claimant received at the latest, even on her own account, on 15 April 2016), such that the agreement was concluded, and concluded on the terms that employment terminated on 30 April 2016.

96. Therefore, even if I am wrong in my conclusions regarding the correct notice having been given, the Claimant, through Mr Charman, waived any rights to notice which she may have had and there was therefore no breach of contract by the Respondents in relation to the termination of her employment on 30 April 2016.

97. As there was no breach of contract, the Claimant's complaint of breach of contract therefore fails.

98. Furthermore, there were no wages "properly payable" in relation to the period from 1 May – 31 August 2016 and the complaint of unlawful deduction from wages therefore also fails.

Employment Judge Baty
20 April 2017